

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SIEMENS INDUSTRY, INC., )  
Plaintiff, )  
vs. ) Civil Action File  
SIPCO, LLC, ) No. 1:10-cv-2478-JEC  
Defendant. )  
\_\_\_\_\_  
)

FILED IN CLERK'S OFFICE  
U.S.D.C. - Atlanta

DEC 20 2010  
JAMES N. HATTEN, Clerk  
By: *[Signature]*  
Deputy Clerk

**DEFENDANT SIPCO, LLC'S (1) MOTION FOR LEAVE TO FILE  
A SUPPLEMENTAL NOTICE IN SUPPORT OF  
ITS MOTION TO DISMISS AND (2) MOTION FOR LEAVE  
TO FILE ITS SUPPLEMENTAL NOTICE UNDER SEAL  
AND MEMORANDUM IN SUPPORT**

COMES NOW, Defendant SIPCO, LLC ("SIPCO") and respectfully requests the Court enter an Order permitting SIPCO (1) to file a Supplemental Notice in Support of its Motion to Dismiss (herein "Supplemental Notice") in the above-styled action, and (2) that the notice be filed under seal. SIPCO has only recently obtained sworn testimony in a related action, and this sworn testimony is critical to material positions Siemens Industry, Inc. ("Siemens Industry") has taken in opposition to SIPCO's pending Motion to Dismiss. In support of these motions, SIPCO respectfully shows the Court as follows:

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1. On May, 11, 2010, SIPCO sued Siemens Industry for patent infringement in the Eastern District of Texas (herein “the First Action”).
2. On August 9, 2010, Siemens Industry filed this duplicative Action seeking, *inter alia*, a declaratory judgment regarding the same patents at issue in the First Action.
3. SIPCO filed its Motion to Dismiss on September 7, 2010.
4. Siemens Industry filed its Response in Opposition to SIPCO’s Motion to Dismiss (herein “Siemens Industry’s Response”) on September 24, 2010. In support of Siemens Industry’s Response, Siemens Industry proffered a Declaration of Steven Shamash, with a caption from the Eastern District of Texas, that had previously been filed in the First Action.
5. SIPCO filed its Reply in Support of its Motion to Dismiss on October 12, 2010.
6. Siemens Industry filed a Motion for Leave to File a Surreply (1) in Opposition to SIPCO’s Motion to Dismiss and (2) in Opposition to SIPCO’s Motion for Rule 11 Sanctions on November 16, 2010.
7. The Court granted Siemens Industry’s Motion for Leave on November 19, 2010.

8. On September 30, 2010, SIPCO served a Rule 30(b)(6) Deposition Notice on Siemens Industry in the related First Action, noticing the deposition for October 20, 2010. The topics of this deposition included the location of technical, marketing, and financial documents.

9. On November 19, 2010, SIPCO deposed Ted Scartz, a Rule 30(b)(6) representative of Siemens Industry.

10. On December 9, 2010, in connection with the First Action, SIPCO deposed Mr. Steven Shamash, the sole declarant to provide testimony in support of Siemens Industry's Response to SIPCO's Motion to Dismiss.

11. The depositions of Mr. Scartz and Mr. Shamash revealed facts that were not available to SIPCO at the time its Motion to Dismiss was briefed. These facts contradict critical representations made in support of Siemens Industry's Response.

12. SIPCO's Supplemental Notice, which contains statements made by Mr. Scartz and Mr. Shamash, will provide the Court with a more accurate record of the facts relevant to SIPCO's Motion to Dismiss.

13. In addition, SIPCO has good cause to file its Supplemental Notice under seal because Siemens Industry has designated portions of the deposition transcripts provided to the court as "Highly Confidential – Attorney Eyes Only"

under the protective order entered in the First action. If SIPCO were to file its Supplemental Notice without any limitations on access, it could violate the protective order entered in the First Action. While Siemens Industry does oppose the filing of SIPCO's Motion for Leave to File the Supplemental Notice, Siemens Industry does not oppose its filing under seal.

14. Therefore, SIPCO requests that the Court grant it permission to file its Supplemental Notice in Support of It's Motion to Dismiss and that the Supplemental Notice be filed under seal.

15. SIPCO attaches its Supplemental Notice in Support of It's Motion to Dismiss, and its exhibits, as Attachment A.

16. SIPCO attaches a proposed order hereto for the Court's convenience.

Respectfully submitted, this 20th day of December, 2010.

ROBBINS GELLER RUDMAN  
& DOWD LLP

/s/ Matthew P. Warenzak

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SIPCO, LLC

**CERTIFICATE OF CONFERENCE**

I hereby certify that on December 17, 2010, Counsel for Plaintiff met and conferred with counsel for Defendant regarding the relief requested in this motion. Defendant opposes SIPCO's Motion for Leave to File A Supplemental Notice, but does not oppose the filing to occur under seal.

/s/ Matthew P. Warenzak  
Matthew P. Warenzak

**CERTIFICATE OF SERVICE**

On this date a copy of the foregoing is being delivered to all counsel of record via electronic and U.S. first-class mail.

This 20th day of December, 2010.

/s/ Matthew P. Warenzak  
Matthew P. Warenzak

RECEIVED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

# ORIGINAL

DEC 20 2010 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
JAMES N. STEPHEN, Clerk ATLANTA DIVISION

JAMES N. MATTEN, Clerk  
By: *[Signature]* Deputy Clerk

SIEMENS INDUSTRY, INC., )  
vs. Plaintiff, )  
SIPCO, LLC, ) Civil Action File  
Defendant. ) No. 1:10-cv-2478-JEC

## [PROPOSED] ORDER

This matter is before the Court on Defendant SIPCO, LLC's (1) Motion for Leave to File Under Seal A Supplemental Notice in Support of its Motion to Dismiss and (2) Motion for Leave to File its Supplemental Notice Under Seal. Upon consideration of the Motion and for good cause shown, both Motions are hereby GRANTED. Defendant SIPCO, LLC may file A Supplemental Notice in Support of its Motion to Dismiss, and may file its Supplemental Notice under seal.

This                    day of December, 2010.

The Honorable Julie E. Carnes  
Chief U.S. District Judge  
Northern District of Georgia